No.17-8995

In the

Supreme Court of the United States

JASON J. MONT

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

REPLY BRIEF FOR THE PETITIONER

STEPHEN C. NEWMAN
Federal Public Defender,
Northern District of Ohio

VANESSA F. MALONE, ESQ.
Counsel of Record
Office of the Federal Public
Defender, N. Dist. Ohio (Akron)
50 South Main St., Suite 700
Akron, Ohio 44308
(330)375-5739
vanessa_malone@fd.org

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TABLE OF AUTHORITIES

CASES

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REPLY BRIEF FOR THE PETITIONER

Petitioner Jason J. Mont respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit in this case. This Court's review is important in light of the faulty interpretation of a statute which is an administrative statute directed to the Bureau of Prison specifically, and the Executive Branch generally. This statute, 18 U.S.C. §3624(e), has been interpreted wrongly by the Sixth Circuit initially in United States v. Goins, 516 F.3d 416 (6th Cir.2008), and that faulty reasoning has been adopted by at least three other circuit courts which have addressed the novel issue of "tolling" a term of supervised release, after the person has been released from the custodial portion of the sentence. In Goins, and the cases which have followed its holding, [Pet. 11-17], the Sixth Circuit Court determined that a directive to the Bureau of Prisons as to calculation of a prisoner's release also controls that releasee after being placed under the supervision of the Judicial Branch, through the United States Probation. Petitioner states that this Court's review is warranted to clarify the statutes involved as well as settle the conflict within the circuit courts, as both the Ninth Circuit and the District of Columbia Circuit courts have determined that 18 U.S.C. §3624(e) does not toll or affect the running of a supervised release term, after the individual is placed on supervised release under the supervision of United States Probation.

1.a. Petitioner Jason J. Mont states that the appeals courts of the Fourth, Fifth, Sixth, and Eleventh Circuits have made a fundamental error by interpreting 18 U.S.C.

§3624(e) as a "tolling" mechanism for supervised release sentences that have begun to run after release from the custodial portion of a sentence. Respondent in its Brief in Opposition asserts that various definitions of "imprisonment" serve to support such a reading of section 3624(e), and the backward-looking view of this administrative statute. [Resp. 10-12]. However, Petitioner submits that each opinion from these circuit courts have abdicated its authority to 18 U.S.C. §3624(e) to affect its own judgment based upon a statute which has no affect after a prisoner is released to the jurisdiction of the United States Probation Department.

b. Title 18, United States Code §3624 directs the management of prisoners while in the custody of the Bureau of Prisons. Specifically, §3624(e) directs the release of a prisoner after the service of sentence, unless that prisoner has another, unrelated sentence of imprisonment that the prisoner is serving or will serve after the service of another sentence. The statute directs the Bureau of Prisons to release a prisoner at the expiration of a sentence to the custody of United States Probation, unless the prisoner has another sentence pending, or a detainer has been lodged, which indicates that another jurisdiction has a right to the prisoner's person. The language which has been wrongly interpreted as a directive to toll the running of supervised release after the Bureau of Prisons has released that individual cannot have this affect: the Bureau of Prisons has no control over the released individual, and no authority to stop and start a term of supervised release that has begun running by way of the prisoner's release from imprisonment. Simply put, this provision which has been interpreted by the Sixth Circuit in United States v. Goins, 516 F.3d 416 (6th Cir.2008), as a tolling

mechanism for a federal district court judgment, is neither authority for such "tolling" nor does the statute have the ability to effect such tolling. Once the prisoner has been released to supervision, section 3624(e) has no effect on the running of the supervised release term.

As referenced in his Petition, the statute which governs supervised release, Chapter 227 of Title 18 which controls sentences in federal court, includes Section 3953, which provides for the imposition of supervised release, its applicable terms, the noticing of violations, its modification or revocation, and the authority to extend supervised release after revocation. Section 3583 provides for warrants or summonses to issue, once the district court has been notified of the violative conduct. Importantly, 18 U.S.C. §3583(i) specifically discussed the district court's "power [ ] to revoke a term of supervised release" and impose a sentence or another term of supervised release after the expiration of the original term, by providing for notice through the issuance of a summons or warrant. The fact that this authority is specifically provided for in the statute which governs supervised release, is additional proof that 18 U.S.C. §3624(e)'s directions to the Executive Branch via the Bureau of Prisons as to when a prisoner is to be released to Probation, is not intended to toll supervised release judgment orders imposed by the Judicial Branch under the authority of 18 U.S.C. §3583.

2. Respondent submits that this Court has rejected petitions previously submitted regarding this issue [Resp. 8, 9], ostensibly to reflect that Petitioner Mont's Petition should be similarly dismissed. However, the cases which were referenced in Respondent's Brief were decided five years prior to the District of Columbia circuit

decision in United States v. Marsh, 829 F.3d 705 (D.C. Cir.2016),which interpretation Petitioner endorses and which more clearly defined the split in the circuit courts' reasoning on this important issue. See also, United States v. Morales-Alejo, 193 F.3d 1102 (9th Cir.1999). Indeed, none of the cases rest squarely upon the statutory construction issue as outlined in the petition, nor upon the challenge to the authority for the Executive Branch to toll a judicial order without notice, and with the ability to retroactively invoke such "tolling." Petitioner submits that this Court should find that this clear error in statutory interpretation, along with the division in the circuit courts warrant this Court's review.

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For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted,

s/ Vanessa F. Malone
VANESSA F. MALONE, ESQ.
(Ohio 0066230)
Attorney at Law
Office of the Federal Public Defender
vanessa_malone@fd.org

Counsel for Petitioner